

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BLERON BARALIU,

No. 07-cv-04626 (VM)

Plaintiff,

-against-

VINYA CAPITAL, L.P. and MICHAEL deSa,

**NOTICE OF
MOTION**

Defendants.

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PLEASE TAKE NOTICE that, upon the annexed affidavit of Morlan Ty Rogers, Esq., the exhibits annexed thereto, the accompanying Memorandum of Law and all prior papers and proceedings herein, the undersigned hereby moves before the Honorable Victor Marrero, United States District Judge, in the United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York 10007, for an Order, pursuant to Rules 12(b)(6) and 9(b) of the Federal Rules of Civil Procedure, dismissing Counts Five, Six, Seven and Eight of plaintiff's complaint herein for failure to state a claim and failure to plead fraud with particularity, and granting such other and further relief as may be just and proper.

PLEASE TAKE FURTHER NOTICE that opposing affidavits and memoranda of law, if any, must be served upon the undersigned within ten (10) business days pursuant to Local Rule 6.1(b) and must be filed with the Court in accordance with applicable rules. Unless such affidavits and memoranda of law are timely served and filed, the relief sought herein may be granted.

Dated: New York, New York
June 6, 2007

VANDENBERG & FELIU, LLP

By: s/Morlan Ty Rogers
Morlan Ty Rogers (MR 3818)
Attorneys for defendants
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To: Alfred J. Smith, Jr. Esq.
Attorney for plaintiff
706 Bedford Street
Stamford, CT 06901
(203) 359-3200

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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No. 07-cv-04626 (VM)

BLERON BARALIU,

Plaintiff,

-against-

AFFIDAVIT

VINYA CAPITAL, L.P. and MICHAEL deSa,

Defendants.

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STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MORLAN TY ROGERS, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and Of Counsel to Vandenberg & Feliu, LLP, attorneys for defendants Vinya Capital, L.P. and Michael deSa, and respectfully submit this affidavit in support of their motion for an Order, pursuant to Rules 12(b)(6) and 9(b) of the Federal Rules of Civil Procedure, dismissing Counts Five, Six, Seven and Eight of plaintiff's complaint (the "Complaint") for failure to state a claim and failure to plead fraud with particularity.

2. Plaintiff originally commenced this action on August 17, 2006 in the United States District Court for the District of Connecticut, where it was assigned to the Honorable Alfred V. Covello, United States District Judge under case no. 3:06-cv-01286-AVC.

3. The Complaint (Exhibit “A” hereto) asserts eight causes of action – breach of contract (Counts One through Four), fraud and misrepresentation (Count Five), wrongful termination and defamation (Count Six), intentional infliction of emotional distress (Count Seven), and violation of the Connecticut Unfair Trade Practices Act (Count Eight).

4. Several of these claims – i.e., the breach of contract and fraud claims – arise under, or in connection with, a written employment agreement that contains a mandatory forum selection clause designating the instant Court or the state courts of New York as the exclusive forum and jurisdiction for this action. Because of this, defendants moved to dismiss Counts One through Five based on improper venue. Said motion *also* sought dismissal of Counts Five through Eight based on failure to state a claim and failure to plead fraud with particularity.

5. In a Ruling dated May 7, 2007 (Exhibit “B” hereto), Judge Covello granted defendants’ motion to the extent of transferring this action to the instant Court on the basis of the forum selection clause. Said Ruling did *not* address or rule upon the branches of defendants’ motion seeking dismissal of Counts Five, Six, Seven and Eight of the Complaint pursuant to Rules 12(b)(6) and 9(b) for failure to state a claim and failure to plead fraud with particularity.

6. By the instant motion, defendants respectfully request that this Court dismiss said claims on these grounds.

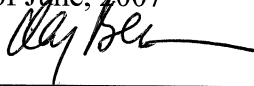
7. As set forth in the accompanying memorandum of law, the fraud claim (Count Five) must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) and 9(b) for failure to plead that claim with particularity.

8. In addition, plaintiff's claims for wrongful termination and defamation (Count Six), intentional infliction of emotional distress (Count Seven), and violation of the Connecticut Unfair Trade Practices Act (Count Eight) fail to state a claim, requiring dismissal of those claims pursuant to Fed. R. Civ. P. 12(b)(6).

WHEREFORE, it is respectfully requested that the Court grant the within motion in all respects.


MORLAN TY ROGERS

Sworn to before me this
6th day of June, 2007



Notary Public

RAY BECKERMAN
Notary Public, State of New York
No. 02BE5038056
Qualified In Queens County
Commission Expires January 17, ~~2007~~
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